

Development of New Contract Regulations – Progress Report

1. Background

The current contract regulations have not been revised since being issued in August 2003 and are due an update. They are now being revised as part of the work to prepare a new constitution for Wiltshire Council.

The current Contract Regulations were issued in tandem with the Procurement Guide. The Contract Regulations cover: general principles, valuing the tendering activity, tendering thresholds, receiving and opening tenders, awarding contracts, use of standing lists and exemptions and exceptions from contract regulations. The Procurement Guide covers: procurement strategy, best procurement practice, making competition work, deciding how to proceed, non-competitive transactions and negotiation.

The purpose of the project is to equip the new Wiltshire Council with concise contract regulations compatible with BMP/SAP and easily accessible user guidance which effectively support best procurement practice.

2. Project Research

Initial enquiries in to current practice were made via the Society of Procurement Officers (SOPO) and with other local authorities (particularly those with SAP) directly. There is much variation of tendering thresholds among other local authorities with the starting value for seeking competitive quotes ranging from £1,000 to £10,000. The starting value for tendering ranging from £25,000 to £100,000. Some local authorities have a slightly broader scope to their Contract Standing Orders also covering the issue of disposal of obsolete or surplus stock (other than land) to ensure best value is achieved either through recycling within the LA or through sale or auction.

The main source of information about current best practice was the South West Regional Improvement and Efficiency Partnership (RIEP) who were very helpful in providing advice and signposting on to good practice guidance from other organisations including the Improvement and Development Agency and the East Midlands Regional Improvement and Efficiency Partnership (RIEP).

The East Midlands Regional Improvement and Efficiency Partnership (RIEP) surveyed the local authorities in their region in 2006 to ascertain the level of financial thresholds used in contract regulations. Thirty two out of forty five local authorities responded. The survey found:

- Written quotations without terms and conditions (T&Cs) specified:
Generally the lower threshold when written quotes are required is £5,000 with a few higher exceptions with an upper limit between £20,000 and £50,000 with a number of exceptions.
- Written quotations with terms and conditions (T&Cs):

A number of authorities appear to recognise a requirement between obtaining a simple quotation from a supplier and accepting the suppliers T&C's and the full tender process by having a Request for Quotation (RFQ) process but using the Councils' T&Cs, albeit in a simplified form to that contained within the full tender process. Such requirements generally start at £20,000 and go up to the tender threshold level.

- Full tender process:
A wide variation of thresholds are in use with the highest starting level being £250,000.
- Recommendations:
Their recommendations were to raise tendering thresholds from current levels whilst acknowledging that some authorities may be uneasy about accepting written quotes at higher thresholds hence the incorporation of a Request for Quotation process concept. The RFQ is based on the use of a standard document issued by the Authority containing a simplified set of terms and conditions to protect the Councils' interests and requiring a written specification.

3. Consultation

Following consultation with the Corporate Directors an officer's working group of nominated representatives was set up for detailed consultation and to make a contribution to the project.

Members of the working group:

Tom Smith – Corporate Procurement Unit
Tony Stocker – Corporate Procurement Unit
Parvis Khansari – ESD/TEL
Simon Jeffery – DCS
Nick Norris - DCE
Simon Burke - DCE
Iain Winterbottom – BMP Team
Jack Hayward - Legal
Mary Higgins – BMP Team

An initial meeting was held on 31st July. The prevailing feeling of the group was that Wiltshire's procurement thresholds (particularly the tendering threshold) were too low and not currently proportionate to the input required. It was also felt that the use of standard terms and conditions would support good practice and the updating of the contract regulations and procurement guidance.

Individual consultation meetings were held with some members of the working group but also with other key colleagues e.g. Internal audit and Strategic Property Services, the latter in respect of works contracts.

A further meeting of the working group was held on 1st September where the following topics were discussed:

- **Clarification of the interface between BMP's Purchase to Pay Process and broader procurement;**
- **The development of standard terms and conditions (T&Cs);**
- **The creation of an internal register of services and resources.**
The aim would be to provide colleagues with an easy way of checking internal sources and resources before embarking on a procurement exercise;
- **The development of a Request For Quotations process (RFQ);**
- **Guidance on partnerships and grants** to be 'signposted' from the contract regulations;
- **Detailed exemption guidance to be developed as part of the new procurement guidance;**
- **Use of a risk assessment tool on tenders over £100k.**

The group will be circulated a first full text draft of contract regulations and a Request for Quotations (RFQ) process model prior to next meeting in the next few weeks to allow group members to seek comments for colleagues.

4. Main areas of change

i) Format:

New regulations will be user-friendly and concise i.e. brief contract regulations (fundamental principles referring to defined processes within the guidance) and a more extensive user guide that can be updated as required without necessarily needing to update the contract regulations. The user guide is not to act as a text book, but instead will be a 'How to' guide.

To facilitate this approach a set of procurement route flowcharts are being developed. These will be accessible via the intranet, with links through to detailed topic guidance and toolkits and templates. A traditional full text version of the new contract regulations will also be available as a pdf file.

ii) Key features:

Further consultation is required on the detail within the procurement route. Each draft procurement route requires a 'make or buy' decision i.e. consideration of whether the business need can be met from in-house services or resources and if so these should be used. Where this is not the case pre-approved sources of supply are sought and if found the SRM Purchase to Pay Process is followed. Where there are no pre-approved sources of supply the procurement is referred to the 'Sourcing Cockpit' (a SAP/BMP term meaning in Wiltshire a virtual group of officers in a procurement role).

All procurement routes take account of the development of the most relevant procurement websites i.e. www.buywiltshire.co.uk and www.supply2gov.uk which facilitate the sourcing of suppliers from the SME community.

More research is being undertaken on possible quotation request processes. We are currently making enquiries in to automated quotation systems similar to the school quote system. The idea is to provide a tool for seeking quotations which could potentially be applied to all levels of procurement below the proposed tendering threshold.

The revised tendering process will take account of key developments such as for some complex procurements the replacement of the negotiated procedure by competitive dialogue. For procurements above the EU thresholds the 'Alcatel' standstill period prior to contract award is a new stage in the process.

For tenders it is likely there will be a requirement to define contract management and review arrangements clearly and to inform CPU when the contract is due for re-tendering.

All contracts to be added to the Corporate Contracts Register.

A risk assessment is to be undertaken for all procurements over £100,000 to determine the best procurement process for the project.

iii): Thresholds for seeking quotations and tenders

At the moment it is proposed to make the following changes to quotation and tendering thresholds:

Contract Regulations - Thresholds:

Contract Description	Low Value Definition (min one quotation) (1)	Intermediate Value Definition (min three written quotations) (2)	High Value Definition (Full Tender Process)	Above EU Thresholds (£3,497,313 works or £139,893 supplies & services)
Goods and Services	Up to £3,000	£3,001 to £25,000	£25,001 to EU Limit	Follow EU procedures
Works	Up to £5,000	£5,001 to £50,000	£50,001 to EU Limit	Follow EU procedures

Proposed thresholds:

Contract Description	Low Value Definition (min one quotation) (1)	Intermediate value Definition (min three written quotations) (2)	RFQ Value Definition	Tender Value Definition (Full Tender Process)	Above EU Thresholds (£3,497,313 works or £139,893 supplies & services)
Goods and Services	Up to £5,000	£5,000 to £25,000	£25,001 to £100,000	Above £100,000	Follow EU procedures
Works	Up to £5,000	£5,000 to £25,000	£25,001 to £100,000	Above £100,000	Follow EU procedures

- All purchase orders must include Wiltshire Council's minimum terms for the supply of goods.
- All RFQs must include Wiltshire Council's standard terms and conditions or recognised, appropriate forms of contract.
- All tenders must use Wiltshire Council's full terms and conditions or recognised, appropriate forms of contract.
- RFQ process to be followed for procurement over £25,000 and below the new full tender process threshold of £100,000

iv) Exemptions:

The expectation is that a number of developments will reduce the number of exemption requests. More framework contracts, the definition of partnerships and grants and an easy process for obtaining competitive quotations will all support this.

v) Training:

All Officers undertaking procurement will require training on the new contract regulations and to keep up to date annual refresher training should be provided perhaps in a similar way to fire training which is currently provided on-line.

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